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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

On re application of:
Jeffrey P. La Forest

Serial No.: 09/711,183

Filed: November 13, 2000

For: METHOD FOR PROVIDING ONLINE INCENTIVES

Date of Last Office Action:
December 15, 2004

) Examiner: Arthur Duran

) Art Unit: 3622

) Attorney Docket No.:
052559-5001

April 18, 2005

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is timely provided to support the Notice of Appeal filed February 15, 2005.

CERTIFICATE OF MAILING

Date of Deposit: April 18, 2005

I hereby certify that these papers are being deposited with the United States Postal Service with sufficient postage as "First Class Mail in an envelope addressed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450

Jeffrey P. La Forest
Jeffrey P. La Forest

1. Real Party in Interest:

The real party in interest is Slingshot Solutions, Inc.

The inventors are Jeffrey P. La Forest, Ben S. Samson, and Robert H. Hornsby, who on October 18, 2000, assigned their interest to Slingshot Solutions, Inc., 196 Highlands Drive, Canton, Michigan 48188, a Delaware Corporation.

2. Related Appeals and Interferences

There are no other prior and/or pending appeals, interferences, or judicial proceedings that are related to, directly affect or that will be directly affected by or have a bearing on the Board's decision.

3. Status of Claims

Claims 1-22 are pending in the application.

The rejection of claims 1-22 is appealed.

Claims 1-18 and 22 stand rejected under 35 U.S.C. §101, as directed to non-statutory subject matter.

Claims 1, 7-11, 13-17, and 19-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (Hammons) (U.S. Patent No. 6,477,509).

Claims 2, 4, 5, 6, 12, and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (U.S. Patent No. 6,477,509) in view of Deaton (Deaton) (U.S. Patent No. 5,687,322).

Claims 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (U.S. Patent No. 6,477,509) in view of Walker (Walker) (U.S. Patent No. 5,862,223).

4. Status of Amendments

The Examiner has refused to enter the amendment present in an after-final response mailed. The examiner states that "The Applicant has amended the independent claims after-final and added new features such as "information relating to the bid on the auction item." Applicant objects to such a rejection and believes that the amendments as presented were previously presented and allowed and therefore do not raise new issues and should be allowed.

While Applicant believes the amendments offered in the After-Final Amendment clearly overcome the Examiner's outstanding rejection, Applicant continues to believe that the final rejection is not supported by the references. A copy of the After-Final Amendment can be found in the Appendix of this Appeal Brief. Applicant request that the After-Final amendments be entered as a) placing this application in condition for allowance, and b) placing this application in better condition for appeal.

However, until such amendments are entered, Applicant objects to and herein argues that the rejection of claims 1-22, entered as of the Examiner's final rejection of August 18, 2004, are not supported by the references and the claims are therefore distinguishable and thus allowable over the art.

5. Summary of Claimed Subject Matter

The present invention provides a method of providing incentives using a computer network to bidders on an auction item, including creating a consumer profile for at least one consumer, the consumer profile including at least information relating to a bid on the auction item, choosing at least one unsold item from an inventory based on the information in the consumer profile, using a learning model to generate an incentive for the at least one chosen unsold item based on the consumer profile, and offering the at least one chosen unsold item and the incentive to the at least one consumer to induce purchasing of the chosen unsold item. (Page 2; Rows 19-25)

The present invention also provides a system for implementing an incentive program for bidders on auction items offered using a computer network, including a consumer database storing consumer information, software for choosing unsold items from an inventory and generating incentives for the chosen unsold items using a learning model that calculates the incentives based on the consumer information in the consumer database, and software for offering the chosen unsold items and the incentives to consumers to induce purchasing of the chosen unsold items. The consumer information has, at the least, information relating to bids on the auction items. The present invention also provides a system for an incentive program for bidders on auction items, including a first memory for storing consumer profiles having consumer information, having at least information relating to bids on the auction items, a second memory for storing unsold items in an inventory, and a third memory for storing a plurality of incentives for each unsold item, each incentive having a value based on a selection of the consumer information. The present invention also provides a method of providing incentives to bidders on an auction item using a system having a first memory for storing consumer profiles that have consumer information including at least information relating to bids on the auction items, a second memory for storing unsold items in an inventory, and a third memory for storing a plurality of incentives for each unsold item, wherein each incentive has a value based on a selection of the consumer information. The method includes creating the consumer profile for at least one consumer, choosing at least one of the unsold items from the inventory based on the consumer information in the consumer profile, generating the incentive for the chosen unsold item based on the consumer profile, the selection of consumer information of the incentive being substantially

similar to the consumer information in the consumer profile, and offering the chosen unsold item and the incentive to the at least one consumer to induce purchasing of the chosen unsold item. (Page 2; Row 26-Page 3; Row 23).

The present invention further provides a database for an incentive program for bidders on auction items, including an inventory file having at least one of detailed descriptions of an inventory, a list of similar items of the inventory, and a list of complementary items of the inventory, and a consumer profile having at least one of bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, Internet service provider, zip code, credit card type, and coupon redemption rate. (Page 3; Row 24-Page 4; Row 2)

The accompanying drawings illustrate the presently preferred embodiment of the invention, and, together with the general description given above and the detailed description given below, serve to explain the features of the invention. (Page 4; Row 4-7)

Fig. 1 is a block diagram of the method of the preferred embodiment

Fig. 1

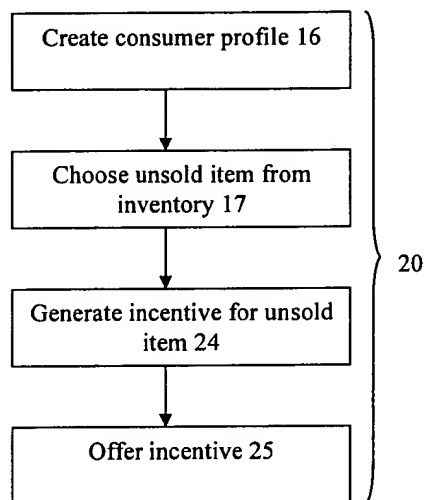


Fig. 2 is a block diagram of the preferred embodiment of the method of Fig. 1 incorporated into an overall product sales system.

Fig. 2

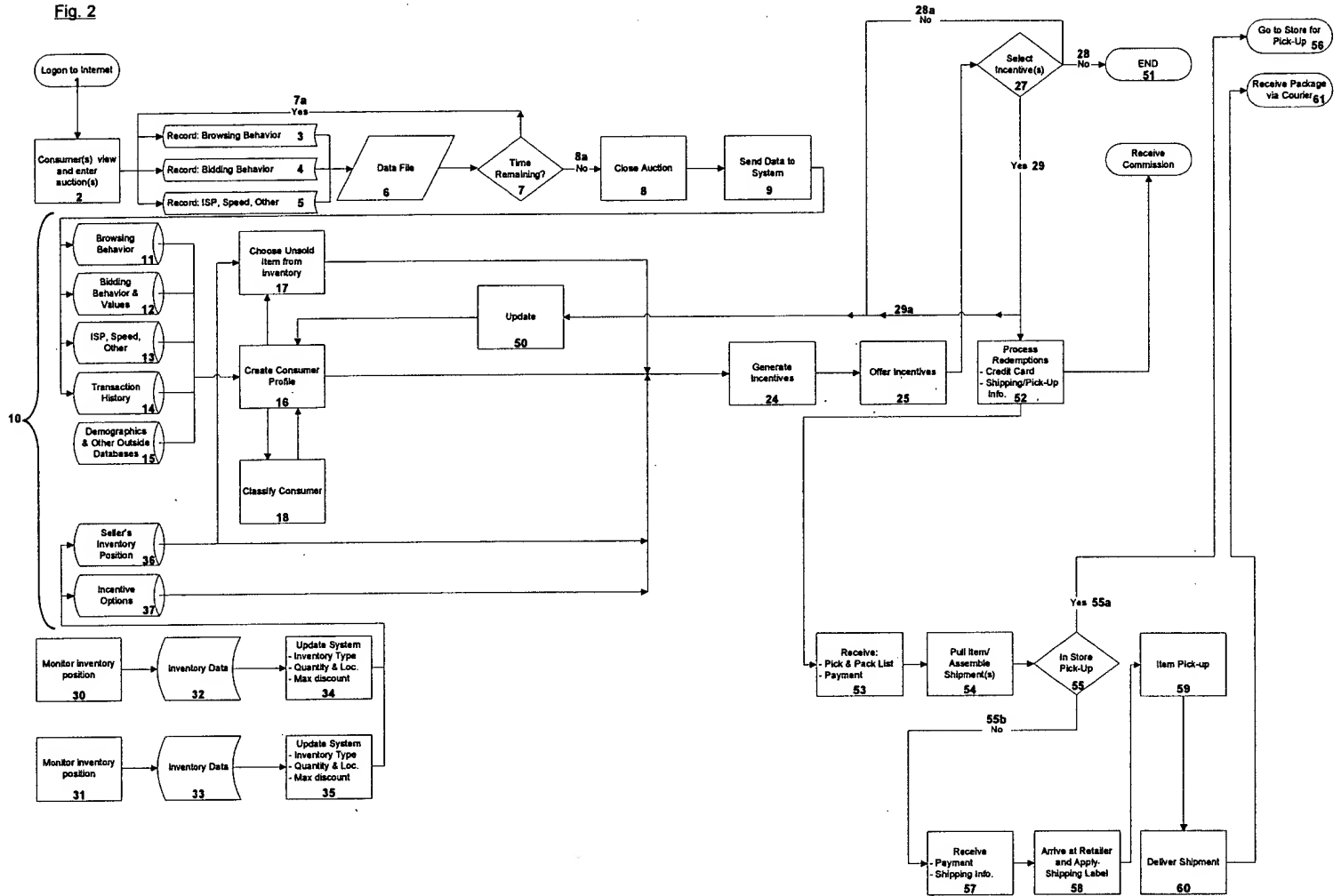


Fig. 3 is a block diagram of the classify consumer step of the method of Fig. 2.

Fig. 3

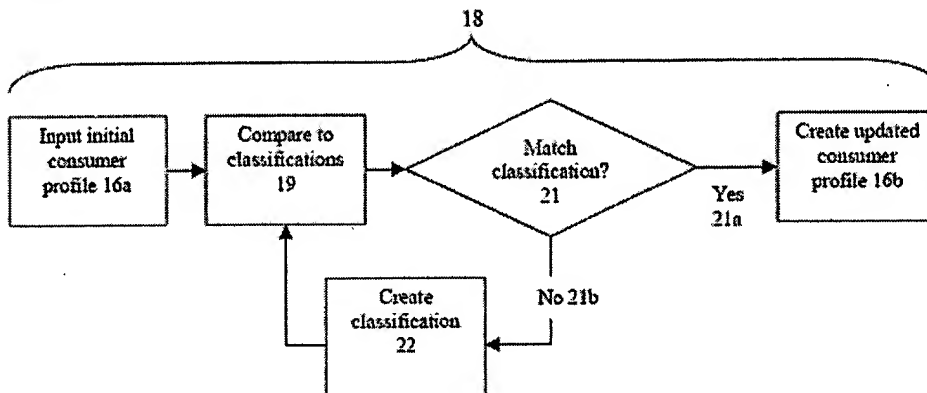
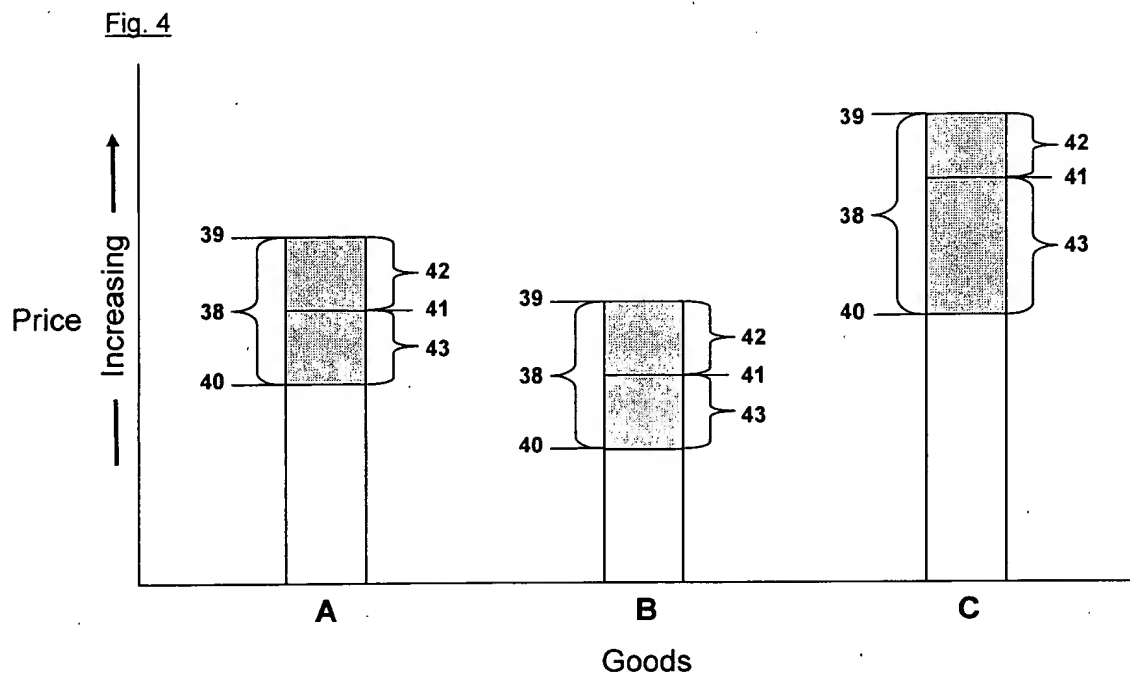


Fig. 4 is a bar graph of incentive options of the method of Fig. 2.



As shown in Fig. 1, the method, or incentive system 20, includes creating a consumer profile 16 for at least one consumer, choosing at least one unsold item, or product to offer, 17 from an inventory based on the information in the consumer profile, generating, or calculating, an incentive for the chosen unsold item 24 based on the consumer profile, and offering the chosen unsold item and the incentive to the consumer 25 to induce purchasing of the chosen unsold item. The consumer profile includes at least information relating to a bid on the auction item. (Page 4; Row 14-20)

In the preferred embodiment, as shown in Fig. 2, the incentive system 20 is incorporated to an overall product sales system with a data provider system 10 and a product supplier system 30. In the preferred embodiment, the data provider system 10 is an auction house and the product supplier 30 is a retailer and/or manufacturer. It should be understood that the data provider system 10 may be any system that supplies information about consumers, such as retailers, distributors, and manufacturers, and the product supplier system 30 may be any system that supplies goods or services, such as financial services and real estate brokers. (Page 4; Row 15-27)

In the preferred embodiment, the consumer logs onto the Internet 1 and chooses an auction site that is entered and viewed 2. It should be understood that the device for connection to the Internet 1 could be a personal computer implementing a web browser with a graphics user interface (GUI). However, other connection devices, such as telephones with a display to communicate information with or without graphics, personal display devices, or any other device that allows communication links to and from the Internet, may be used. Moreover, although Internet communication protocol, such as TCP/IP protocol is a preferred communication method for the preferred embodiment, other similar methods may be employed. In addition, in particular applications of the preferred embodiment, the process of viewing may be conducted via a connection, such as a dial-up or direct connection link. For example, secured connections may be used to provide incentives on financial instruments or other secured items. (Page 5; Row 1-11)

In the preferred embodiment, the consumer bids on items through the Internet. In an alternative embodiment, the consumer attends an auction house, in person, and bids on auction items, using a method required by the auction house. This method may include raising a bidding card with a number assigned to the consumer. In the preferred embodiment, as the consumer explores the site and places bids on auction items, the auction house records the consumer's browsing behavior 3, bidding behavior 4, and other data 5. The browsing behavior 3 may include the auction items the consumer has considered and the bidding behavior 4 may include start bids and bid frequency. The other data 5 may include information about the consumer's personal computer, such as Internet service provider and modem speed. The recorded information is stored in a data file 6 by the auction house. The auction house continuously monitors all bidders and records their behavior, while the auction is still open or there is still time remaining 7, specified by yes 7a. When there is no time remaining 7, specified by no 8a, the auction is closed 8 and the data file 6 is then sent 9 to the incentive system 20. (Page 5; Row 12-24)

This incentive system 20 may use existing auction infrastructures to capture and analyze relevant data in the data file 6. The system 20 enables retailers and manufacturers to minimize cash flow

constraints, brand dilution concerns, inventory levels, fragmentation of the online dynamic pricing market, and impatient bidder populations, which all conspire to create conditions that reduce the viability of simple dynamic pricing formulas. (Page 5; Row 25-Page 6; Row 2)

The sent data received by the incentive system 20, preferably, has price-sensitivity indicators for all bidders, including browsing behavior 11, bidding and behavior values 12, personal computer information 13, such as an Internet service provider and modem speed, and transaction history 14. Preferably, the browsing behavior 11 has click stream information, which includes other components of the auction site that were visited by the consumer, number of pages visited, time spent on each page during each visit per each auction, number of auctions visited/participated, and frequency of revisiting auctions. Preferably, the bidding and behavior values 12 includes bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, coupon redemption rate, and keywords used in auction searches. The personal computer information 13 includes Internet service provider, referring URL link, web browser make and model, operating system, bookmarks, zip code, access location (work or home), and credit card type. Preferably, the bidding and behavior values 12 also contain whether the consumer's bid was a successful bid, which is the winning bid, or an unsuccessful bid. Demographics, psychographics, market conditions, and any other relevant information from other databases 15 or any other relevant information identified through contact with the consumer may also be recorded. From this information 11, 12, 13, 14 and 15, the system 20 creates a consumer profile 16. (Page 6; Row 3-19)

The information in the consumer profile is used and updated throughout the system 20. One such use is in classifying, or categorizing, the consumer into a consumer category 18. As shown in Fig. 3, an initial, or current, consumer profile, which contains the information 11, 12, 13, 14, and 15 that is unique to the consumer, is inputted 16a. In creating an updated consumer profile 16b, which includes a classification, the initial consumer profile is compared with existing consumer classifications 19, or index of consumer behavior indicators, in a database of the system 20. There are several different classifications, which may be modified or divided into

more classifications, as required by the system. In the preferred embodiment, classification categories include at least: (Page 6; Row 20-Page 7; Row 2)

- Price Sensitive / Insensitive

Based on recorded behavior, a consumer may be classified as either being price sensitive or insensitive. For example, a consumer who has been found to be bidding in three auctions, but consistently stops bidding once the price for the item reaches some set level is in the price sensitive category. (Page 7; Row 3-7)

- Brand Sensitive / Insensitive

Based on recorded behavior, a consumer may be classified as either being brand sensitive or insensitive. For example, a consumer who is bidding on a given item from brand X and has also looked at/bid on brands Y, Z, A, B, and C may be labeled as brand insensitive. (Page 7; Row 8-11)

- Time Sensitive / Insensitive

Based on recorded behavior, a consumer may be classified as either being time sensitive or insensitive. For example, a consumer who enters a nine day auction on the ninth day with 3 hours remaining to make his/her first bid may be labeled as time sensitive. (Page 7; Row 12-15)

- Feature Sensitive / Insensitive

Based on recorded behavior, a consumer may be classified as either being feature sensitive or insensitive. For example, a consumer views/bids only items with feature X would be considered feature sensitive. (Page 7; Row 16-19)

- Intersection(s) of above listed classifications

Classifications may also be combined to form new classifications, which may be improved groupings. For example, if the price sensitive and brand insensitive categories intersect, then the resulting classification is a consumer that views/bids on items that focus on/around a given price point, but are from numerous different brands. (Page 7; Row 20-24)

The comparison determines if there is a match 21 between the consumer profile and a classification in the database. If there is a match between the consumer profile and a classification, specified by yes 21a, between the consumer profile and the classification, then the consumer profile 16b is categorized in that classification. If there is not a match between the consumer profile and the classification, specified by no 21b, then a new classification will be created 22 and the database will be updated with the new classification. The consumer profile 16a will again be compared 19 to the classifications in the database and a match will be found, specified by yes 21a, because the consumer profile 16a will match the classification created with the consumer profile. As the classification is stored in the consumer profile, any personal information unique to the consumer, such as names and credit card numbers, will be deleted. The consumer profile 16 will then have the consumer information from 16a, less any personal information, and the classification from 16b. (Page 7; Row 25-Page 8; Row 9)

The system 20 also includes choosing at least one unsold item from an inventory 17. In order to choose the unsold items from inventory 17, inventory positions of retailers and/or manufacturers are monitored 31. This entails collecting inventory data from the retailers and/or manufacturers 33. The inventory data 33 may include detailed descriptions, such as inventory type, inventory levels, quantity and physical and virtual location of inventory, lists of similar items, and lists of complementary items. An inventory database system 35 is created and updated from the inventory data 33 of both the retailers and manufacturers. A maximum allowable discount from the full price for each unsold item in the inventory, or minimum price, is also determined and stored in the inventory database system 35. The maximum allowable discount may be negotiated and is based on the seller=s, or retailer=s or manufacturer=s, inventory pressure, which is a measure of the desire to more quickly move the inventory out of their stores and to another retailer or distributor or a consumer. Pressure is driven by the explicit and opportunity costs of holding onto the inventory, as well as space and any other constraints. (Page 8; Row 10-22)

Preferably, the system 20 uses the inventory database system 35 to enable retailers struggling with the issue of excess inventory to effectively and profitably move excess inventory at prices

that meet their margin objectives and on a schedule that meets their cash flow objectives. Preferably, the inventory database system 35 are received by the system 20, where seller=s inventory positions 36 containing the inventory data 33, and incentive options 37 are determined. The seller=s inventory positions 36, preferably, contain products in their slow-moving or excess inventory and dead inventory and returned items to enable the sellers to effectively and profitably move excess inventory at prices that meet their margin objectives, and on a schedule that meets their cash flow objectives. The seller=s forecasting and point-of-sale inventory control systems may also be considered. The incentive options 37 include additional percentage or specified amount discounts from manufacturers to help the seller or retailer move the inventory, such as where the retailer gives an additional 5% incentive on all Model 1234 goods or services moved out of inventory, and free add-ons, such as more warranty or free or otherwise discounted additional goods or services. (Page 8; Row 23-Page 9; Row 9)

Based on the product attributes the consumer most prefers, which are revealed in the browsing behavior 11 in the consumer profile, and the seller=s inventory position 36, an attribute based product consideration set, which enables the system 20 to choose unsold items from inventory 17, is created. For example, if the consumer is considered brand-driven, where the consumer looks for products across the price spectrum, but only focuses on a given manufacturer, the products in the product consideration set will most likely be products by that given manufacturer. The products offered will be determined by the seller=s inventory position 36 because only certain products will be available to offer from the seller=s inventory. Similarly, if the consumer is considered price-sensitive, where the consumer looked for products within a certain price range, then only products within that price range may be included in the product consideration set. (Page 9; Row 10-20)

When the consumer profile is classified 18, the unsold item from inventory is chosen 17, and the seller=s inventory position 36 and incentive options 37 are determined, the system 20 will generate incentives 24 using a learning model. The learning model calculates the incentives based on the information in the consumer profile, classification, product consideration set, seller's inventory position 36, and incentive options 37. Preferably, the calculations performed

by the learning model will maximize the seller surplus 43. The learning model is constantly monitored and updated to improve accuracy. When the system 20 is turned on at Day 0, it has minimal information on which to base incentive generation decisions. As time goes by and redemption data is accumulated, statistics will be used in the learning model to determine what information, or attributes, add to the ability to accurately produce incentives and which attributes do not add value. Once this is known, attribute weights will be adjusted to reflect this information. Over time, it is possible to more accurately understand how important each attribute is in computing the proper incentive. In the preferred embodiment, the redemption rate is among the primary indicators monitored and updated in order to improve the accuracy of the attributes, of the data, and their weightings in the learning model. Each profile/incentive combination may be regularly monitored for accuracy by reviewing redemption statistics. For example, Consumer Profile #A3421 may suggest a given amount of incentive. If this incentive is given to the consumer whose behavior matches the profile and the consumer chooses the incentive, then the score for the profile/incentive combination will improve. Consumer profiles exhibiting low or split accuracies will either be recomputed (if low) or split into further profiles (if split) to improve their accuracy. (Page 9; Row 21-Page 10; Row 14)

In regard to the information in the consumer profile, preferably, each piece of data is assigned a weight, which determines the amount of influence, or importance, each piece of data will have in the calculation of the incentive. Preferred attributes include intensity (how often the consumer bid, checked on the current bid price, viewed the website in general), competitiveness (if the consumer responded each and every time he or she was outbid), final bid-price (as a percentage or full-retail price of an item, where the higher the final bid, the less of an incentive a consumer will receive), and zip code driven demographics (higher level annual income zip-codes will receive less of a discount than lower annual income zip codes). In one embodiment, the number of bids may be used by the learning model, where if consumer 1 (C1) bid 5 times during the auction and consumer 2 (C2) bid 10 times during the auction, it may be determined that C2 is more interested in the auction item than C1. As a result, C1's incentive will be less than C2's incentive because C2 is more interested and will be willing to pay more for a given item. In another embodiment, the referring URL link may be used by the learning model, where C1

enters the auction from a pricing/search bot, which is a class of Internet search agents employed by consumers to scour the various retailers and auctions databases to look for an item with the criteria the consumer specifies, such as price, make, model, etc., and C2 enters from some generic link (start page of C2's Internet Service Provider). C1 will receive incentives greater than C2 because entering through a price-bot indicates that C1 is price sensitive. In yet another embodiment, the learning model may use current and past bid data and number of auctions visited and/or participated, where C1 participated in three auctions from the start point of each auction, but consistently dropped out when the price of the auction item reached X% of full retail or some actual dollar amount and C2 participated in only one auction and joined with a few hours remaining. C1 may be viewed as more price sensitive than C2 because C1 has a clear price ceiling, so C1 will receive an incentive greater than C2. (Page 10; Row 15-Page 11; Row 11)

In regard to the classifications, consumers determined to be price sensitive may receive incentives with larger values than those determined to be price insensitive, consumer's determined to be brand sensitive may receive incentives targeted only for specific brands they are determined to be interested in while consumers determined to be brand insensitive may receive incentives for any number of brands available, and consumer's determined to be time sensitive may receive incentives with lower values than those consumers determined to be time insensitive. Additionally, consumers determined to be feature sensitive may only receive incentives for items containing the feature of interest, or in the case where items containing the feature of interest are not available, the incentive for an alternate item will be greater than if an item with the feature was available. (Page 11; Row 12-21)

The learning model will also determine the products that meet the criteria of both the product consideration set and the seller's inventory position 36. The learning model calculates incentives for products determined to be part of an individual consumer's product consideration set. The product consideration set may be constrained in two ways. First, the set may be constrained by the available inventory from the seller's or retailer's shelves. Second, the set may be chosen based on the behavior of the individual consumers. The products offered may be

comparable or different items in relation to the original auction item, and all of the products from the consideration set may be offered or a select few may be offered. The products may also be from one or more sellers. For example, if consumer 1 (C1) had been viewing goods A, B, C, D, and E, all from different manufacturers, but with retail prices falling between \$300-\$325, then C1 would be offered (based on availability) goods from any manufacturers with similar average prices. In contrast, if consumer 2 (C2) had been viewing goods V, W, X, Y, and Z, all from manufacturer J, but varying in price from \$200-\$500, C2 would be offered (based on availability) goods from manufacturer J that varied in price. Preferably, each of these goods will have a discount zone 38, where the effective price 41 will be determined based on the consumer profile and matched classification. (Page 11; Row 22-Page 12; Row 10)

Fig. 4 displays a bar graph of the incentives that may be calculated for Goods A, B and C. The incentives are calculated by first establishing a discount zone 38 between a full price 39 of the unsold item and the minimum price 40, which is the full price 39 less the maximum allowable discount. More specifically, an effective price 41 within the discount zone 38 deemed necessary to trigger a consumer purchase is calculated and offered to the consumer as the incentive. The effective price 41 will vary within the discount zone and a larger discount zone 38 will result in a greater variance. For example, the discount zone 38 of Good C is greater than the discount zone 38 of Goods A and B, so there is more variance in the effective price 41 for Good C than Goods A and B. The discount zone 38 may be divided into a consumer surplus 42 between the full price 39 and the effective price 41 and a seller surplus 43 between the effective price 41 and the full price 39 less the maximum allowable discount 38. An effective price 41 that is closer to the full price than the minimum price 40, as shown for Good C, will result in a greater seller surplus 43. The effective price 41 will be the incentive offered to the consumer. (Page 12; Row 11-23)

When an incentive is generated 24, or created, the system 20 will then offer the incentive 25 to the consumer. In the preferred embodiment, an incentive notification is created and sent to the consumer. The incentive notification may be in the form of e-mail or any other type of delivery. The incentive may be a general incentive for any product or a specific incentive for a specific product. In addition, the notification may contain one or more incentives offered at the same

time to the same consumer. These incentives may be based on a retail price of the auction item or an unsuccessful bid, which is less than a lowest successful bid in the auction. The incentives may also be in the form of a coupon, discount, rebate, additional product, reward, or any other type of offer. For example, an e-mail entitled A Manager=s Special≡ may be sent to C1, a consumer, with notification that C1 was outbid on an S brand product. The e-mail may or may not give C1 a time limit to respond to the offers, or incentives. There may be several incentives for C1 to choose, such as a coupon for \$91 off a J brand product A with a MSRP (manufacturer=s suggested retail price) of \$299.95 from Stereo Store, a coupon for \$71 off a P brand product A with a MSRP of \$349.99 from Electronic Retailer, a coupon for \$46 off a S brand product A with a MSRP of \$299.99 from Ed=s Manufacturer, and a coupon for a S brand product B with a MSRP of \$249.99 from Stereo Store. The J brand, P brand, and S brand products A are comparable items to the S brand product A in which C1 was outbid, whereas the S brand product B is a different item, but is the same brand as the auction item. In addition, the products are from three different sellers, with two products from the same seller. The incentives are also all based on the retail price of the product. (Page 12; Row 24-Page 13; Row 16)

When the incentive is delivered to the consumer, the consumer has the option of selecting the incentive 27. If the consumer chooses not to select the incentive, specified by no 28, the system 20 will update 50 the consumer profile with information that the incentive was not redeemed. The consumer may specify no 28 by not responding to the incentive within a specified period of time, terminating communications, or responding with a rejection. When no 28 is specified, the contact with the consumer will end 51. (Page 13; Row 17-22)

If, however, the consumer chooses to select the incentive, specified by yes 29, the consumer profile will be updated 50 with information that the incentive was redeemed and the redemption will be processed 52. The redemption information is then used to determine how accurate the learning model is performing. For example, if approximately 50% of the consumers in a classification expected to act on an incentive do not, the learning model may then split the classification into two other and/or new classifications. The data elements that are familiar to those choosing the incentive will form a first split classification and the data elements that are familiar to those not choosing the incentive will form a second split classification. If, on the other hand, the redemption rate is statistically very low, the learning model may recompute, or modify, the classification altogether. (Page 13; Row 18-Page 14; Row 5)

To accept the incentive, preferably, the consumer may click on a hypertext link, which may be in the form of an image, and proceed with purchasing the product. This allows for automated fulfillment of rewards. Processing 52 includes collecting payment information, such as a credit card number, and shipping or pick-up information. The consumer or retailer may choose to arrange shipment of the product if the store is not located near the consumer or the consumer may choose to pick up the product at a local retailer. At this point, a commission for providing the incentive generated by the system 20 will be received by the operator of the system 20. Preferably, the commission is a transaction fee or a percentage of the seller surplus 42 on the product offered with the incentive. (Page 14; Row 6-14)

When the payment information is collected from the consumer, it is forwarded in the form of a pick and pack list and received 53, along with payment, by the seller. The seller will pull the item and/or assemble shipment 54. If the consumer specified an in store pick-up 55, specified by yes 55a during processing 52, then the seller will hold onto the offered product until the consumer goes to the store for pick-up 56. On the other hand, if the consumer did not want in store pick-up 55, specified by no 55b, then a carrier will receive payment for shipping and the shipping information 57. Preferably, the carrier, or courier, will arrive at the retailer, or seller, to pick up the offered product and apply a shipping label 58. The offered product, or item, will be

picked up 59 and delivered 60 to the consumer. The offered product, in the form of a package, will then be received by the consumer via the courier 61. (Page 14; Row 15-24)

The system 20 also includes a consumer database storing consumer information, software for choosing the unsold items from the inventory and generating the incentives for the chosen unsold items based on the consumer information in the consumer database, and software for offering the chosen unsold items and the incentives to consumers to induce purchasing of the chosen unsold items. The consumer information has, at the least, information relating to bids on the auction items. (Page 14; Row 25-Page 15; Row 3)

The system 20 also includes a first memory for storing the consumer profiles having consumer information, having at least information relating to bids on the auction items, a second memory for storing the unsold items in the inventory, and a third memory for storing the incentives for each unsold item, each incentive having a value based on a selection of the consumer information. The first memory stores computed historical, current, and projected aggregated consumer information as consumer profiles. (Page 15; Row 4-9)

While the invention has been disclosed with reference to certain preferred embodiments, numerous modifications, alterations, and changes to the described embodiments are possible without departing from the sphere and scope of the invention, as defined in the appended claims and their equivalents thereof. Accordingly, it is intended that the invention not be limited to the described embodiments, but that it have the full scope defined by the language of the following claims. (Page 15; Row 10-15)

Summary of Independent Claims

Independent claim 1 concerns a method of providing incentives to bidders on an auction item.

Independent claim 19 concerns a system for implementing an incentive program for bidders on auction items.

Independent claim 20 concerns a system for an incentive program for bidders on auction items.

Independent claim 21 concerns a method of providing incentives to bidders on an auction item using a system having a first memory for storing consumer profiles having consumer information, including at least information relating to bids on the auction items, a second memory for storing unsold items in an inventory, and a third memory for storing a plurality of incentives for each unsold item, each incentive having a value based on a selection of the consumer information.

Independent claim 22 concerns a database for an incentive program for bidders on auction items.

6. Grounds of Rejection to be Reviewed on Appeal

Claims 1-18, 20, and 22 stand rejected under 35 U.S.C. §101, as directed to non-statutory subject matter. The response to the First Office Action adequately addressed this item by adding "via a computer network" to the preamble of the claim. Applicant believes that such a limitation properly identifies the field of technological arts to which the invention is directed. Either the limitation is not adequate to identify the field of technological arts to which the invention is directed or the Examiner feels that such a limitation is inappropriate in the preamble. However, no specific reason is provided in the Final Office Action for not withdrawing this rejection as to amended claims 1, 20, and 22. It appears that the Examiner has merely copied his initial rejection with regard to amended claims 1, 20, and 22 without specifically explaining why the amendments of claims 1, 20, and 22 were not satisfactory.

Given that Applicant is a pro se Applicant and not well versed in the nuances of patent law, Applicant believes that the rejection under 35 U.S.C. §101 could be easily overcome with some assistance by the Examiner and/or clarification of the rejection. Given that Applicant amended the preambles of claims 1 and 22 and the body of the claim 20, Applicant believes that the Examiner has merely dismissed the Applicant's attempts to overcome this rejection. Thus, the 35 U.S.C. §101, rejections are appealed.

Claims 1, 7-11, 13-17, and 19-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (Hammons) (U.S. Patent No. 6,477,509). The features in these claims are important, significant, and produce valuable new results vs. Hammons. Further, the claims (both prior and existing) have always been unobvious vs. Hammons given that Hammons does not disclose each and every limitation of the claims. Thus, the 35 U.S.C. §103(a) rejections are appealed.

Claims 2, 4, 5, 6, 12, and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (U.S. Patent No. 6,477,509) in view of Deaton (Deaton) (U.S. Patent No. 5,687,322). The rejection under 35 U.S.C. §103(a) as being unpatentable over Hammons in view of Deaton

depends on claims 1, 7-11, 13-17, and 19-22 being successfully rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons alone. As indicated above, the §103(a) rejection of independent claims 1 is improper based upon Hammons alone and therefore any dependent claim is likewise improperly rejected upon an combination therewith. Further, claims 19-22 continue to be patentably distinct over a §103(a) rejection based upon Hammons and Deaton. Applicant respectfully requests that the rejections of these claims be withdrawn.

Claims 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons (U.S. Patent No. 6,477,509) in view of Walker (Walker) (U.S. Patent No. 5,862,223). The rejection under 35 U.S.C. §103(a) as being unpatentable over Hammons in view of Walker depends ultimately from claim 1, which identified above, is improperly rejected based upon Hammons. Applicant respectfully requests that the rejections of these claims be withdrawn.

Finally, in the Advisory Action, the Examiner indicates that the proposed amendments would raise new issues requiring further consideration or search and therefore the amendments were not entered. The Examiner specifically states that “The Applicant has amended the Independent claims after-final and added new features such as “information relating to the bid on the auction item.” This reasoning is absurd given that each claim already included such a limitation (claim 1, first element; claim 19, first element; claim 20, first element; claim 21, preamble; claim 22, preamble.) Given that this limitation is a previously identified and claimed feature of the invention, it would appear that the Examiner has failed to either fully appreciate Applicant’s invention or failed to fully review Applicant’s claims. Applicant respectfully requests that the After-Final Amendment be entered.

7. Argument

At no time have the objections or rejections addressed the novel approach of generating incremental revenue for the seller of online auction items by successfully maximizing the seller's surplus and minimizing the consumer's surplus using incentives determined from individual elasticity curves for each consumer created by a learning model as described in the Application. Instead, the Examiner has consistently presented rejections based on preferences to placing certain text in the "body" of the claim vs. the "preamble" of the claim and based on references Hammons, an invention that in no way predicts the Applicant's claims.

35 U.S.C. §101

The final Office Action asserts that claims 1-18, and 20-22 under U.S.C. 101 are directed to non-statutory subject matter. This is incorrect because Claims 1, 20, 21, and 22 were amended in the Applicant's response to the First Office Action to more clearly define the scope of the invention. Support for the amendments can be found in the specification as filed (and are shown below). Therefore, Applicant respectfully requests that the Section 101 rejection be withdrawn.

Claim 1: "via a computer network, said method"

The amended preamble of claim 1 reads, "A method of providing online incentives to bidders on an auction item via a computer or network, said method comprising:" In view of this text, this claim successfully refers to the technological arts. Further, as it is the Applicant's understanding that the preamble identifies the field of the invention, such an amendment would appear proper. Further, because Applicant added such a limitation to the preamble, such an amendment should be viewed as breathing life into the preamble and therefore such a limitation must be considered. As such, the Examiner's continued rejection of claim 1 based upon U.S.C. §101 appears improper and should be withdrawn. Nevertheless, Applicant believes that this rejection could be easily overcome with some assistance by the Examiner and/or clarification of the rejection.

Claims 2-18

Claims 2-18 depend from claim 1. These claims stand rejected because they purportedly have the same defects as the claim from which they depend. As claim 1 specifically refers to the

technological art field, Applicant respectfully requests that the rejections of these claims likewise be withdrawn.

Claim 20: “electronic”

In response to the first office action, Applicant added and the Examiner entered the further limitations to the claim that requires, “a first electronic memory... a second electronic memory ... a third electronic memory...” In view of this text, it would appear that Applicant has successfully placed this claim within the electronics technical field and therefore the §101 rejection should be withdrawn. Further, the Examiner has not provided any reasoning as to why this limitation does not overcome the §101 rejection.

Claim 21

The amended body of claim 21 requires a first and second electronic memory. As in claim 20, it would appear that Applicant has successfully placed this claim within the electronics technical field and therefore the §101 rejection should be withdrawn. Further, the Examiner has not provided any reasoning as to why this limitation does not overcome the §101 rejection.

Claim 22: “stored in electronic memory”

The preamble of claim 22 was previously amended to include “stored in an electronic memory...” As indicated above, such an amendment to the preamble appears acceptable to overcome this §101 rejection. In view of this text, this claim appears to successfully refer to the technological arts and thus the rejection appears overcome. Further, the Examiner has not provided any reasoning as to why this limitation does not overcome the §101 rejection.

35 U.S.C. §103(a)

Claims 1, 7-11, 13-17, 19-22 are rejected under 35 U.S.C. §103(a) as unpatentable over Hammonds (6,477,509). Applicant respectfully traverses this rejection. Hammonds discloses a marketing method and system for use on the internet. Particularly, Hammonds discloses a system for providing incentives to consumers based upon transmittal of static consumer profile

information (col 4, lines 40-43). Therefore, in consideration for receiving an incentive, a user is shown targeted advertising based upon preferences identified in a static consumer profile (see col. 4, lines 30-40). Hammonds fails to disclose Applicant's invention as recited in claim 1.

Particularly, Hammonds is silent with regard to creating a consumer profile where the profile includes information related to a bid on an internet auction item. More particularly, Hammonds only mentions auctions at col. 9, lines 47-50, as information which could be shown to a system user, such as a list of items which are presently being offered in online auctions alongside the current bid for those items. Thus, while Hammonds states that it can provide auction items for viewing, it never suggests creating a consumer profile that includes information relating to a bid on an auction item.

As discussed with the Examiner, and identified succinctly in the Hammons abstract and throughout the specification, the Hammons invention provides a consumer an incentive for signing up for the system, supplying pertinent information about herself, and viewing targeted information. Hammond's incentive is money, internet currency or credit, and that incentive is based solely on advertisement viewing time. Applicant's incentive, while it may have a monetary value, is generated based upon the user's bid or bidding history of an auction item and not based upon time. Therefore, Hammons invention as disclosed cannot suggest applicant's invention.

Hammons discusses auction bidding related to its invention as provided:

Other examples of relevant information which could be shown to a system user (emphasis added) are shown in FIG. 3. These could include ads for the hobby in which the system user is interested; the current price of selected stock along side a brokerage ad; a photo and short quote from a political figure whom the system user supported; a list of items which are presently being offered in online auctions alongside the current bid for those items, possibly showing also the system user's current bid for the items; a running total of current funds available in the system users account; a display of the system user's

checking balance, along with a note from his bank offering other services; and the current price of stock in which the system user is interested.

This paragraph discusses types of targeted information shown to the viewer. However, while an auction item may be shown to a viewer based upon their preferences, the underlying incentive is still only calculated based upon the viewing time of the user. For example, presume Ebay is a member of this marketing method. If the viewer indicates collectible spoons as a hobby, the viewer will be shown online auction items related to collectible spoons. Depending upon the time spent viewing collectible spoons, the viewer will generate money that can be used to buy a collectible spoon. Nevertheless, the monetary incentive is still only based upon the time spent viewing these items. Applicant's incentive is calculated based upon the bid and not the time.

The same example premise will now be used to distinguish Applicant's invention and how it maximizes the efficiency of selling surplus or unsold items. Presume Ebay is a member of Applicant's system. The user does not receive any incentive based upon the time of viewing any auction item. However, once a bid is placed on an auction item, a consumer profile relating to the bid is created (e.g. bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, etc.). At least one unsold item from an inventory based upon that bid item is chosen. An incentive is generated and that incentive along with the inventory item is offered to the user. Such a distinction is not suggested by Hammons.

The Examiner further quotes the following passage:

The advertiser also has available to him real time in-depth reporting on advertising performance, brand awareness, and advertising tracking. The system provides qualitative message and creative testing, data mining services, and market research. These benefits are available in the version of the system in which the system user's activities are monitored, and each action of the system user on the internet is recorded and fed back to the information system computer for analysis.

This passage suggests monitoring, recording, and analyzing user viewing habits. However, this statement specifically recites the purpose of evaluating advertising performance, brand awareness, and advertising tracking. This information will provide the advertiser with information on the effectiveness of its advertising mode. There is no suggestion that any bidding activity will be used to calculate an incentive for an inventory item. The features in these claims are important, significant, and produce valuable new results vs. Hammons. The claims (both prior and existing) have always been unobvious vs. Hammons. Thus, the 35 U.S.C. §103(a) rejections are appealed.

35 U.S.C. §103(a)

Claims 2, 4, 5, 6, 12, and 18 stand rejected under 35 U.S.C. §103(a) as unpatentable over Hammonds (6,477,509) in view of Deaton (5,687,322). The rejection under 35 U.S.C. §103(a) as being unpatentable over Hammons in view of Deaton depends on claims 1, 7-11, 13-17, and 19-22 being successfully rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons alone. As the underlying rejection of the independent claims based solely upon Hammonds is improper, any resultant combination for rejection the dependent claims is likewise improper.

35 U.S.C. §103(a)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammonds (6,477,509) in view of Walker (5,862,223). The rejection under 35 U.S.C. §103(a) as being unpatentable over Hammons in view of Walker depends on claims 1, 7-11, 13-17, and 19-22 being successfully rejected under 35 U.S.C. §103(a) as being unpatentable over Hammons alone. As the underlying rejection of the independent claims based solely upon Hammonds is improper, any resultant combination for rejection the dependent claims is likewise improper.

Advisory Action (15-DEC-04) – New Subject Matter Issue

Finally, in the Advisory Action, the Examiner indicates that the proposed amendments would raise new issues requiring further consideration or search and therefore the amendments were not entered. The Examiner specifically states that “The Applicant has amended the Independent claims after-final and added new features such as “information relating to the bid on the auction item.” Given that each claim already included such a limitation (claim 1, first element; claim 19, first element; claim 20, first element; claim 21, preamble; claim 22, preamble.), this reasoning for not considering the amendments or entering them for purposes of appeal appears arbitrary. Given that this limitation is a previously identified and claimed feature of the invention, it would appear that the Examiner has failed to either fully appreciate Applicant’s invention or failed to fully review Applicant’s claims.

Claims 1, 20, 21, and 22 were further amended to more clearly define the scope of the invention as suggested by the Examiner. Support for the amendments can be found in the specification as filed in the After Final Response (Appendix to this Appeal Brief) and are discussed below and within the previously presented claims. Such amendments were directed at clarification for the Examiner as opposed to adding new limitations requiring further search or study.

Claims Appendix

1. (Previously Presented) A method of providing incentives to bidders on an auction item via a computer network, said method comprising:

creating a consumer profile for at least one consumer, the consumer profile including at least information relating to a bid on the auction item;

choosing at least one unsold item from an inventory based on the information in the consumer profile;

generating an incentive for the at least one chosen unsold item based on the consumer profile; and

offering the at least one chosen unsold item and the incentive to the at least one consumer to induce purchasing of the chosen unsold item.

2. (Original) The method of claim 1 further comprising:

providing a maximum allowable discount for each unsold item from the inventory, the incentive comprising an amount less than the maximum allowable discount.

3. (Original) The method of claim 2 wherein the providing comprises:

negotiating the maximum allowable discount of the unsold item with a seller.

4. (Original) The method of claim 2 wherein the providing comprises:

establishing a discount zone between a full price of the unsold item and the full price less the maximum allowable discount.

5. (Original) The method of claim 4 wherein the generating comprises:

determining an effective price within the discount zone deemed necessary to trigger a consumer purchase, the discount zone having a consumer surplus between the full price and the effective price and a seller surplus between the effective price and the full price less the maximum allowable discount;

calculating at least one of a rebate and coupon equivalent to the consumer surplus.

6. (Original) The method of claim 5 further comprising:

recording at least one of detailed descriptions, a list of similar items, and a list of complementary items of the inventory;

calculating the maximum allowable discount based on the seller's inventory pressure;

inputting into the consumer profile at least one of bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, click stream, Internet service provider, zip code, credit card type, and coupon redemption rate;

comparing the consumer profile to an index of consumer behavior indicators;

categorizing the consumer according to results of the comparison;

assigning a weight to the input of the consumer profile to determine importance of the input; and

monitoring the input to improve accuracy of the assigned weights.

7. (Original) The method of claim 5 further comprising:

generating revenue by at least one of charging a transaction fee and receiving a percentage of the seller surplus on the unsold item.

8. (Original) The method of claim 5 wherein the offering comprises:

basing the incentive on a retail price of the auction item.

9. (Original) The method of claim 1 further comprising:

updating the consumer profile by recording whether the incentive was redeemed.

10. (Original) The method of claim 1 further comprising:

furnishing at least one bid less than a lowest successful bid for the auction item.

11. (Original) The method of claim 1 wherein the generating comprises:

establishing the incentive based on at least one of inventory levels, market conditions, and consumer preferences.

12. (Original) The method of claim 1 wherein the choosing comprises:

furnishing at least one of slow-moving inventory, dead inventory, and returned items from at least one seller.

13. (Original) The method of claim 1 wherein the offering comprises:

basing an incentive on the unsuccessful bid.

14. (Original) The method of claim 1 wherein the creating comprises:

evaluating consumer behavior;

determining demographics and psychographics of the consumer;

gathering transaction information of the consumer; and

classifying the consumer in a consumer category.

15. (Original) The method of claim 1 wherein the choosing comprises:
 - selecting a comparable unsold item in relation to the auction item.
16. (Original) The method of claim 1 wherein the choosing comprises:
 - redirecting the consumer to a different unsold item as compared to the auction item.
17. (Original) The method of claim 1 wherein the offering comprises:
 - extending a general incentive with at least one seller.
18. (Original) The method of claim 1 wherein the offering comprises:
 - expiring the incentive upon at least one of a rejection by the consumer and a termination of communications by the consumer.
19. (Original) A system for implementing an incentive program for bidders on auction items comprising:
 - a consumer database storing consumer information, including at least information relating to bids on the auction items;
 - software for choosing unsold items from an inventory and generating incentives for the chosen unsold items based on the consumer information in the consumer database; and
 - software for offering the chosen unsold items and the incentives to consumers to induce purchasing of the chosen unsold items.
20. (Previously Presented) A system for an incentive program for bidders on auction items comprising:
 - a first electronic memory for storing consumer profiles having consumer information, including at least information relating to bids on the auction items;
 - a second electronic memory for storing unsold items in an inventory; and
 - a third electronic memory for storing a plurality of incentives for each unsold item, each incentive having a value based on a selection of the consumer information.

21. (Previously Presented) A method of providing incentives to bidders on an auction item using a system having a first memory for storing consumer profiles having consumer information, including at least information relating to bids on the auction items, a second memory for storing unsold items in an inventory, and a third memory for storing a plurality of incentives for each unsold item, each incentive having a value based on a selection of the consumer information, the method comprising:

creating the consumer profile for at least one consumer and storing the profile on the first electronic memory;

choosing at least one of the unsold items from the inventory based on the consumer information in the consumer profile and storing the item on the second electronic memory;

generating the incentive, which is chosen from a number of incentives that are stored on a third memory, for the chosen unsold item based on the consumer profile [file], the selection of consumer information of the incentive being substantially similar to the consumer information in the consumer profile; and

offering the chosen unsold item and the incentive to the at least one consumer to induce purchasing of the chosen unsold item.

22. (Previously Presented) A database stored in an electronic memory for an incentive program for bidders on auction items comprising:

an inventory file having at least one of detailed descriptions of an inventory, a list of similar items of the inventory, and a list of complementary items of the inventory; and

a consumer profile having at least one of bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, Internet service provider, zip code, credit card type, and coupon redemption rate.

Evidence Appendix

There is no extrinsic evidence.

Related Proceedings Appendix

There are no related proceedings

Remarks

It is Applicant's belief that the Examiner has failed to understand the present invention. And while Applicant concedes that a key-word search of the Hammons patent reveals a single use of the word "auctions" and four occurrences of the term "bid" or "bidding", a simple reading and understanding of Hammons provides a clear understanding of how Applicant's invention is different from Hammons. Further, a plain reading of Applicant's claims provides numerous limitations not disclosed in Hammons. Nevertheless, Applicant has continuously attempted to explain the invention to the Examiner and amend the claims to more fully describe the invention so as to assist the Examiner in understanding the invention. However, based upon the photocopy final rejection and erroneous reasoning regarding not entering the After-Final Amendment, it appears that the Examiner is unwilling to review this case further despite what appears to be unsupported rejections of the claims based upon Hammons.

Therefore, Applicant requests that that the Appeals Board diligently review both Applicant's invention and the claims as offered and instruct the Examiner to withdraw all pending rejections.

Respectfully submitted,

18 - APR - 2005

Date



Jeffrey P. La Forest

(734) 735-5595

Appendix: After-Final Amendment

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application:	Samson et al.	Group Art Unit:	3622
Serial No.:	09/711,183	Examiner:	Arthur Duran
Filing Date:	November 13, 2000	Docket No.:	052559-5001
Title:	Method of Providing Online Incentives		

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

AFTER FINAL RESPONSE

Dear Sir:

Applicant acknowledges the receipt of the Final Office Action dated August 18, 2004, setting a shortened statutory period of 3 months (November 18, 2004) to respond thereto. As this After Final Response is being filed under Certificate of Mailing dated November 16, 2004, no additional fees appear due.

In the Final Office Action, the examiner rejects all 22 pending claims. Applicant appreciates the Examiner's consideration in the telephone conference held on November 1, 2004, and his suggestion regarding the filing of this After Final Response. In the telephone conference, the Examiner indicated his willingness to consider amendments to the claims to overcome the Section 101 rejection. Applicant herein presents language as discussed with the Examiner to overcome the Section 101 rejection. Further, an at length discussion was had regarding the

disclosure of the Hammons reference. Applicant appreciates the Examiner's willingness to further review the present claims in light of the amendments and arguments presented herein.

Accordingly, applicant submits this After Final Response. Please review the Response in view of the following amendments and remarks.

IN THE CLAIMS

1. (Currently Amended) A method of providing incentives to bidders on an auction item via a computer network, said method comprising:

creating a consumer profile via a computer network for at least one consumer, the consumer profile including at least information relating to a bid on the computer network auction item;

choosing at least one unsold item from an inventory based on the information in the consumer profile;

generating an incentive for the at least one chosen unsold item using a learning model that calculates the incentive based on the [consumer profile] information relating to the bid on the auction item; and

offering via the computer network the at least one chosen unsold item and the incentive to the at least one consumer to induce purchasing of the chosen unsold item.

2. (Original) The method of claim 1 further comprising:

providing a maximum allowable discount for each unsold item from the inventory, the incentive comprising an amount less than the maximum allowable discount.

3. (Original) The method of claim 2 wherein the providing comprises:

negotiating the maximum allowable discount of the unsold item with a seller.

4. (Original) The method of claim 2 wherein the providing comprises:

establishing a discount zone between a full price of the unsold item and the full price less the maximum allowable discount.

5. (Original) The method of claim 4 wherein the generating comprises:

determining an effective price within the discount zone deemed necessary to trigger a consumer purchase, the discount zone having a consumer surplus between the full price and the effective price and a seller surplus between the effective price and the full price less the maximum allowable discount;

calculating at least one of a rebate and coupon equivalent to the consumer surplus.

6. (Original) The method of claim 5 further comprising:

recording at least one of detailed descriptions, a list of similar items, and a list of complementary items of the inventory;

calculating the maximum allowable discount based on the seller's inventory pressure;

inputting into the consumer profile at least one of bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, click stream, Internet service provider, zip code, credit card type, and coupon redemption rate;

comparing the consumer profile to an index of consumer behavior indicators;

categorizing the consumer according to results of the comparison;

assigning a weight to the input of the consumer profile to determine importance of the input; and

monitoring the input to improve accuracy of the assigned weights.

7. (Original) The method of claim 5 further comprising:

generating revenue by at least one of charging a transaction fee and receiving a percentage of the seller surplus on the unsold item.

8. (Original) The method of claim 5 wherein the offering comprises:

basing the incentive on a retail price of the auction item.

9. (Original) The method of claim 1 further comprising:

updating the consumer profile by recording whether the incentive was redeemed.

10. (Original) The method of claim 1 further comprising:

furnishing at least one bid less than a lowest successful bid for the auction item.

11. (Original) The method of claim 1 wherein the generating comprises:

establishing the incentive based on at least one of inventory levels, market conditions, and consumer preferences.

12. (Original) The method of claim 1 wherein the choosing comprises:

furnishing at least one of slow-moving inventory, dead inventory, and returned items from at least one seller.

13. (Original) The method of claim 1 wherein the offering comprises:

basing an incentive on the unsuccessful bid.

14. (Original) The method of claim 1 wherein the creating comprises:

evaluating consumer behavior;

determining demographics and psychographics of the consumer;

gathering transaction information of the consumer; and

classifying the consumer in a consumer category.

15. (Original) The method of claim 1 wherein the choosing comprises:

selecting a comparable unsold item in relation to the auction item.

16. (Original) The method of claim 1 wherein the choosing comprises:

redirecting the consumer to a different unsold item as compared to the auction item.

17. (Original) The method of claim 1 wherein the offering comprises:

extending a general incentive with at least one seller.

18. (Original) The method of claim 1 wherein the offering comprises:

expiring the incentive upon at least one of a rejection by the consumer and a termination of communications by the consumer.

19. (Original) A system for implementing an incentive program for bidders on auction items offered via a computer network comprising:

a consumer database storing consumer information, including at least information relating to bids on the auction items offered via a computer network;

software for choosing unsold items from an inventory and generating incentives for the chosen unsold items using a learning model that calculates the incentive based on the [consumer information] information relating to the bid on the auction item in the consumer database; and

software for offering the chosen unsold items and the incentives to consumers to induce purchasing of the chosen unsold items.

20. (Currently Amended) A system for an incentive program for bidders on auction items offered via a computer network, the system comprising:

a first electronic memory for storing via a computer network consumer profiles having consumer information, including at least information relating to bids on the auction items offered via a computer network;

a second electronic memory for storing unsold items in an inventory;

a learning model that calculates an incentive having a value based upon information relating to the bid on the auction item; and

a third electronic memory for storing a plurality of incentives for each unsold item.[, each incentive having a value based on a selection of the consumer information.]

21. (Currently Amended) A method of providing incentives to bidders on an auction item using a system having a first memory for storing consumer profiles having consumer information, including at least information relating to bids on the auction items, a second memory for storing unsold items in an inventory, and a third memory for storing a plurality of incentives for each unsold item, each incentive having a value based on a selection of the consumer information, the method comprising:

creating the consumer profile for at least one consumer and storing the profile on the first electronic memory via a computer network;

choosing at least one of the unsold items from the inventory based on the [consumer information] the information relating to the bid on the auction item in the consumer profile and storing the item on the second electronic memory;

generating the incentive, which is chosen from a number of incentives that are stored on a third memory, for the chosen unsold item using a learning model that calculates the incentive based on the [consumer profile] the information relating to the bid on the auction item, the selection of consumer information of the incentive being substantially similar to the consumer information in the consumer profile; and

offering the chosen unsold item and the incentive via a computer network to the at least one consumer to induce purchasing of the chosen unsold item.

22. (Currently Amended) A database stored in an electronic memory for an incentive program for bidders on auction items offered via a computer network comprising:

an inventory file having at least one of detailed descriptions of an inventory of auction items offered via a computer network, a list of similar items of the inventory, and a list of complementary items of the inventory; and

a consumer profile having at least one of bidding history, start bid, bid frequency, bid increment, final bid, winning bid, target product, Internet service provider, zip code, credit card type, and coupon redemption rate acquired through knowledge of previous bids made on auction items offered via a computer network.

REMARKS

The examiner rejects claims 1-18, and 22 under U.S.C. 101 as directed to non-statutory subject matter. Claims 1, 7-11, 13-17, 19-22 are rejected under 35 U.S.C. §103(a) as unpatentable over Hammons (6,477,509); claims 2,4,5,6,12, 18 are rejected under 35 U.S.C. §103(a) as unpatentable over Hammons (6,477,509) in view of Deaton (5,687,322); and claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammons (6,477,509) in view of Walker (5,862,223).

Claims 1, 20, 21, and 22 have been amended to more clearly define the scope of the invention as suggested by the Examiner. Support for the amendments can be found in the specification as filed. Therefore, Applicant respectfully requests that the Section 101 rejection be withdrawn.

Claims 1, 7-11, 13-17, 19-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hammons (6,477,509). Applicant has attempted to further distinguish the present invention by amending claims 1, 19, 20, 21, and 22 to clarify that the incentive of the present invention is based upon information relating to a bid or bidding history on a computer network auction item and that the incentive is generated using a learning model that calculates the incentive based upon that bid or bidding history. Applicant contends that such a distinction is not disclosed or suggested in Hammons.

As discussed with the Examiner, and identified succinctly in the Hammons abstract and throughout the specification, the Hammons invention provides a consumer an incentive for signing up for the system, supplying pertinent information about herself, and viewing targeted information. Hammond's incentive is money, internet currency or credit, and that incentive is based solely on advertisement viewing time. Applicant's incentive, while it may have a

monetary value, is generated based upon the user's bid or bidding history of an auction item and not based upon time. Therefore, Hammons invention as disclosed cannot suggest applicant's invention.

Hammons discusses auction bidding related to its invention as provided:

Other examples of relevant information which could be shown to a system user (emphasis added) are shown in FIG. 3. These could include ads for the hobby in which the system user is interested; the current price of selected stock along side a brokerage ad; a photo and short quote from a political figure whom the system user supported; a list of items which are presently being offered in online auctions alongside the current bid for those items, possibly showing also the system user's current bid for the items; a running total of current funds available in the system users account; a display of the system user's checking balance, along with a note from his bank offering other services; and the current price of stock in which the system user is interested.

This paragraph discusses types of targeted information shown to the viewer. However, while an auction item may be shown to a viewer based upon their preferences, the underlying incentive is still only calculated based upon the viewing time of the user. For example, presume Ebay is a member of this marketing method. If the viewer indicates collectible spoons as a hobby, the viewer will be shown online auction items related to collectible spoons. Depending upon the time spent viewing collectible spoons, the viewer will generate money that can be used to buy a collectible spoon. Nevertheless, the monetary incentive is still only based upon the time spent viewing these items. Applicant's incentive is calculated based upon the bid and not the time.

The same example premise will now be used to distinguish Applicant's invention and how it maximizes the efficiency of selling surplus or unsold items. Presume Ebay is a member of Applicant's system. The user does not receive any incentive based upon the time of viewing any auction item. However, once a bid is placed on an auction item, a consumer profile relating to the bid is created (e.g. bidding history, start bid, bid frequency, bid increment, final bid,

winning bid, target product, etc.). At least one unsold item from an inventory based upon that bid item is chosen. An incentive is generated and that incentive along with the inventory item is offered to the user. Such a distinction is not suggested by Hammons.


The Examiner further quotes the following passage:

The advertiser also has available to him real time in-depth reporting on advertising performance, brand awareness, and advertising tracking. The system provides qualitative message and creative testing, data mining services, and market research. These benefits are available in the version of the system in which the system user's activities are monitored, and each action of the system user on the internet is recorded and fed back to the information system computer for analysis.

This passage suggests monitoring, recording, and analyzing user viewing habits. However, this statement specifically recites the purpose of evaluating advertising performance, brand awareness, and advertising tracking. This information will provide the advertiser with information on the effectiveness of its advertising mode. There is no suggestion that any bidding activity will be used to calculate an incentive for an inventory item.

It is Applicant's hope that this response will help illuminate the novelty of the present invention. Applicant appreciates the Examiner's willingness to discuss this invention at length in our telephone conference and in his willingness to review these amendments and comments. Applicant is willing to discuss this matter at greater length should the Examiner deem it necessary.

Respectfully,


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